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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JASON WILEY,

14 Defendant.
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Case No. 2:10-cr-00456-LDG (VCF)

ORDER

18 The defendant, Jason Wiley, moves to amend (ECF No. 224) his pending 28 U.S.C.
19 § 2255 motion to vacate, set aside, or correct his sentence (ECF No. 204). Alternatively,
20 he has moved for leave to file a second or successive § 2255 motion (ECF No. 225). Both
21 motions seek leave of the Court to pursue a claim that his 18 U.S.C. §924(c) convictions
22 are unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015).
23 Consistent with these motions, Wiley filed a second amended abridged § 2255 motion
24 (ECF No. 227) and a second § 2255 motion (ECF No. 228). As the Supreme Court has not
25 recognized that § 924(c)'s residual clause is void for vagueness, the Court will deny his
26 motion to amend and his motion for leave to file a second or successive §2255 motion.

1 Wiley was convicted of conspiracy to interfere with commerce by armed robbery,
2 nine counts of interference with commerce by armed robbery ("Hobbs Act robbery") in
3 violation of 18 U.S.C. § 1951, and ten counts of using a firearm during and in relation to a
4 crime of violence under 18 U.S.C. § 924(c). He seeks leave to amend his § 2255 motion to
5 attack the latter convictions or, alternatively, to file a second §2255 motion to attack those
6 convictions.

7 In *Johnson v. United States*, 135 S. Ct. 2551 (2015), the Supreme Court held that
8 the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1), (2)(B)(ii), was
9 unconstitutionally vague. In his proposed second §2255 motion or amended motion, Wiley
10 argues that *Johnson* is equally applicable to §924(c) cases. The Ninth Circuit, however,
11 has recently held to the contrary, finding that "[t]he Supreme Court has not recognized that
12 § 924(c)'s residual clause is void for vagueness in violation of the Fifth Amendment."
13 *United States v. Blackstone*, 2018 WL 4344096, *7 (9th Cir., Sept 12, 2018). As indicated
14 by the Ninth Circuit, "[t]he Supreme Court may hold in the future that *Johnson* extends to
15 sentences imposed . . . pursuant to 18 U.S.C. § 924(c), but until then [defendant's] motion
16 is untimely." *Id.*

17 Wiley moves to stay (ECF No. 239) consideration of his motions until the Ninth
18 Circuit issues "the mandate in *Blackstone* or until the United States Supreme Court
19 resolves certiorari of *Blackstone*, whichever is later." As the Ninth Circuit has issued its
20 decision in *Blackstone*, however, this Court is bound to follow that decision. *Yong v. I.N.S.*,
21 208 F.3d 1116, 1119 n.2 (9th Cir. 2000).

22 Accordingly,

23 THE COURT **ORDERS** that the United States' Motion for Leave to Advise the Court
24 of Relevant New Authority (ECF No. 238) is GRANTED.

25 THE COURT FURTHER **ORDERS** that Defendant's Motion to Stay (ECF No. 239) is
26 DENIED.

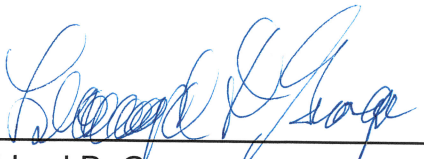
1 THE COURT FURTHER **ORDERS** that Defendant's Motion to Amend his Pending
2 Section 2255 Motion (ECF No. 224) is DENIED.

3 THE COURT FURTHER **ORDERS** that Defendant's Motion for Leave to File a
4 Second or Successive Motion (ECF No. 225) is DENIED.

5 THE COURT FURTHER **ORDERS** that the Clerk of the Court shall strike the
6 Amended Abridged Motion to Vacate, Set Aside, or Correct Sentence (ECF No. 227) and
7 the Motion to Vacate, Set Aside, or Correct Sentence (ECF No. 228).

8 THE COURT FURTHER **ORDERS** that Defendant's Motion for Leave to File
9 Supplemental Authority (ECF No. 230) is DENIED as moot.

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11 DATED this 18 day of March, 2019.

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14 Lloyd D. George
15 United States District Judge
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